

27

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14640 of the American University, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 211 for review and approval of a revised campus plan in the R-1-B, R-5-A and R-5-B Districts; in the area generally bounded by Van Ness Street on the north; Glenbrook Road, Rockwood Parkway and Newark Street on the south; University Avenue and 46th Street on the west, and; Nebraska and Massachusetts Avenues east of Ward Circle, N.W. on the east; and in the area bounded by Yuma Street on the north; Warren Street on the south; 42nd Street on the west, and; Nebraska Avenue and Tenley Circle, N.W. on the east (Square 1560, Lot 807; Square 1599, Lots 805 and 812; Square 1600, Lots 1, 800, 801, 810 and 814; Square 1601, Lot 3; Square 1728, Lot 1); and

Application No. 15109 of the American University, pursuant to 11 DCMR 3108.1, for a special exception under Section 211 for further processing of the Washington College of Law, temporary trailers, an addition to the Mary Graydon Center, and an addition to the Butler Pavilion Shops in conjunction with a proposed revised campus plan (BZA Application No. 14640) in an R-1-B and R-5-A District at premises 4400 Massachusetts Avenue, N.W., (Square 1599, Lot 805 and Square 1600, Lot 1).

HEARING DATES: October 28 and November 12, 1987;
 January 6 and 30, 1988; July 12, October
 20, 21 and November 1, 1989.

DECISION DATES: March 2, April 6, 1988 and December 6,
 1989 and May 2, 1990.

DISPOSITION: The Board GRANTED the applications with
 CONDITIONS by a vote of 5-0 (William
 Ensign, Charles R. Norris, Paula L.
 Jewell, William F. McIntosh and Carrie
 L. Thornhill to grant).

FINAL DATE OF ORDER: February 21, 1990

ORDER

The Board granted the applications, with conditions, by its Order dated February 21, 1990. By letter received on March 9, 1990, Betty K. Sheffield, a party in opposition to the application filed a motion for reconsideration of the

Board's decision in the applications. The motion for reconsideration was not filed in a timely manner and was not properly served on the other parties to the application.

By correspondence received on March 16, 1990, Ms. Sheffield filed a certification of service of the motion on the parties and requested a waiver of the ten day filing requirement to allow the Board to accept the motion for reconsideration. The request for waiver was based on Ms. Sheffield's understanding that staff had advised Ms. Rosa Sumpter that if the motion for reconsideration were postmarked on or before March 5, 1990, it would be accepted as timely filed. At its public meeting of April 4, 1990, the Board deferred consideration of the request and directed staff to instruct Ms. Sheffield to submit evidence certifying service of her request for waiver on other parties to the application, as well as a statement from Ms. Sumpter clarifying the conversation she had with staff relative to the timeliness of the filing of the motion for reconsideration.

By letter dated April 4, 1990, counsel for the applicant opposed the request for waiver of the ten-day filing requirement and the motion for reconsideration.

By correspondence received April 24, 1990, Ms. Sheffield certified service of the request for waiver on all parties. By letter dated April 26, 1990, Ms. Sumpter submitted a letter setting forth the reasons she believed the timeliness of filing was contingent on the postmark of the correspondence. At its public meeting of May 2, 1990, the Board determined that its process would be better served by approval of the waiver request, rather than by undertaking to make a factual determination about the events that preceded the untimely filing of the motion for reconsideration. For that reason, the Board waived its ten day filing requirement to accept the motion for reconsideration.

In the motion for reconsideration, Ms. Sheffield contends that the Order of the Board is in error as follows:

- a. The Board's approval of the law school building was based on revised plans which were not provided to the Fort Gaines Citizens Association by the applicant and, therefore, the testimony of the architect on behalf of the FGCA and a neighborhood resident as set forth in Findings of Fact Nos. 88 and 91 was discredited.
- b. The content of Findings of Fact Nos. 47, 92 and 93 reflect the views of a neighbor, but are not authorized as the views of the community or the FGCA.

- c. Finding of Fact No. 18 relative to the perimeter fence of the law school is ambiguous as to type and location and was never approved by the neighbors.
- d. Finding of Fact Nos. 41, 42 and 50 do not reflect the opposition's concerns.
- e. At its public meeting of December 6, 1989, some Board members expressed concern that the Law School building is too large for the proposed site.

By letter dated April 4, 1990, counsel for the applicant opposed the motion for reconsideration based on the following:

- a. The allegation that the revised plans for the Law School were not provided to the FGCA is invalid as plans for the law school were provided to parties as part of the applicant's filings and were available during community meetings.
- b. Revisions to the campus plan, including the Law School, were made in an effort to respond to numerous concerns and requests of neighbors over the course of a long series of meetings in which the FGCA participated.
- c. All plans and other materials were made a part of the public record in the files of the Board and were available for review by any interested party.

Upon consideration of the motion, the response thereto, the evidence of record and its final order, the Board concludes that it has made no error in deciding the application. The motion does not raise any new issues that were not previously considered by the Board. The Board further concludes that its final order reflects the long history of the campus plan review process before the Board. The plans for the Law School have undergone considerable revision since the inception of the process but the Board concludes that all of the applicants submissions to the record have been available for public inspection and further, were thoroughly presented during the course of the public hearing process. The issues and concerns raised by the opposition, individuals as well as organizations, were thoroughly presented at the public hearings and are addressed in the final order of the Board. The Board's decision was based on its consideration of all the evidence presented by both the applicant and the opposition. The fact that the Board and the opposition arrived at different conclusions does not make the decision of the Board capricious or unlawful.

Accordingly it is ORDERED that the motion for
RECONSIDERATION of the Board's final order is hereby DENIED.

DECISION DATE: May 2, 1990

VOTE: 5-0 (Charles R. Norris, William F. McIntosh,
Paula L. Jewell and Carrie L. Thornhill to
deny; William Ensign to deny by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAY 31 1990

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD
SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL
PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE
BEFORE THE BOARD OF ZONING ADJUSTMENT."

15109order/BHS21

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14640 and 15109

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that copies of orders dated MAY 31 1990 denying reconsideration and denying a stay have been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

1. Wayne S. Quin, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006
2. Joseph D. Murphy, Chairperson
Advisory Neighborhood Commission 3-D
P.O. Box 40846, Palisades Station
Washington, D.C. 20016
3. Paul Strauss, Chairperson
Advisory Neighborhood Commission 3-E
P.O. Box 9953, Friendship Station
Washington, D.C. 20016
4. Robert E. Herzstein
Neighbors for a Livable Community
4710 Woodway Lane, N.W.
Washington, D.C. 20016
5. Alan M. Pollock
4428 Sedgwick Street, N.W.
Washington, D.C. 20016
6. Frederick Allen, President
Spring Valley Wesley Heights Citizens Assn.
3880 University Avenue, N.W.
Washington, D.C. 20016
7. John P. Brown
Embassy Park Condominium
4230 Embassy Park Drive, N.W.
Washington, D.C. 20016

8. Stanely Baum
4443 Springdale Street, N.W.
Washington, D.C. 20016
9. Barbara T. Yeomans
3909 - 48th Street, N.W.
Washington, D.C. 20016
10. Charles Schulze
4119 - 45th Street, N.W.
Washington, D.C. 20016
11. Carolyn Carr
Westover Place Community Assn.
4376 Westover Place, N.W.
Washington, D.C. 20016
12. Glenbrook Road Association
c/o Richard B. Nettler, Esquire
Gordon, Feinblatt, Rothman, Hoffberger & Hollander
1800 K Street, N.W.
Suite 600
Washington, D.C. 20006
13. John E. Montel, President
Ft. Gaines Citizens Assn.
4447 Springdale Street, N.W.
Washington, D.C. 20016
14. Dr. Cyril Ponnampereuma
4452 Sedgwick Street, N.W.
Washington, D.C. 20016
15. Michael Wolf
Citizens for Preservation of Residential Neighborhoods
4532 - 43th Street, N.W.
Washington, D.C. 20016
16. Edward Flattau
4532 Van Ness Street, N.W.
Washington, D.C. 20016
17. Betty Sheffield
4412 Springdale Street, N.W.
Washington, D.C. 20016
18. Mary Jo Boya
4437 Sedgwick Street, N.W.
Washington, D.C. 20016
19. Dr. M.S. Esfandiary
4401 Sedgwick Street, N.W.
Washington, D.C. 20016

- 20. Michael Geglia
American University Park Citizens Assn.
4712 Elliot Street, N.W.
Washington, D.C. 20016
- 21. James & Eugenia Langley
4404 Springdale Street, N.W.
Washington, D.C. 20016
- 22. Rosa L. Sumpter
4416 Sedgwick Street, N.W.
Washington, D.C. 20016
- 23. Faith Burton
Ft. Gaines Citizens Assn.
4441 Sedgwick Street, N.W.
Washington, D.C. 20016
- 24. Jill Abeshouse Stern
4840 Glenbrook Road, N.W.
Washington, D.C. 20016



EDWARD L. CURRY
Executive Director

DATE: MAY 31 1990